

SUMMARY OF THE WORKSHOP TO SOLICIT COMMENTS ON THE PROPOSED REGULATIONS OF THE STATE DEPARTMENT OF PERSONNEL

July 21, 2009
CARSON CITY, NEVADA

Attendees in Carson City:

Shelley Blotter, Division Administrator of Employee and Management Services,
Department of Personnel
Mark Evans, Supervisory Personnel Analyst, Department of Personnel
Amy Davey, Personnel Analyst III, Department of Personnel
Mary Kaye Spencer, Administrative Assistant III, Department of Personnel
Katie Holmberg, Personnel Technician III, Department of Administration
Steve Aldinger, Deputy Administrator, Department of Business & Industry
Patrick Cates, ASO 4, Department of Cultural Affairs
Teri Hack, Personnel Technician III, Department of Conservation & Natural Resources
Anke Simpson, Personnel Analyst I, Department of Conservation & Natural Resources
Wendy Getz, Personnel Analyst I, Department of Gaming Control Board
Kareen Masters, Deputy Director, Department of Health and Human Services
Kathy Swann, Personnel Analyst I, Department of Health and Human Services
Kate Hinton-Burnette, Personnel Analyst II, Department of Health and Human Services
Mary Gordon, Personnel Analyst I, Department of Health and Human Services
Norma Mallett, Personnel Officer III, Department of Health and Human
Services
Diane Marcin, Personnel Analyst III, Department of Information & Technology
Barbara Morningstar, Personnel Officer I, Department of Taxation
David Olsen, Chief Accountant, Department of Transportation
Thor Dyson, Administrator II Engineer, Department of Transportation
Kris Ross, Personnel Officer I, Department of Wildlife
Kim Jolly, Personnel Analyst, Department of Wildlife

Attendees in Las Vegas:

Mark Anastas, Division Administrator of Recruitment and Retention, Department of
Personnel
Ann McDermott, Deputy Attorney General, Attorney General's Office
Ron Cuzze, NSLEOA

The workshop commenced at 9:00 a.m. Shelley Blotter welcomed everyone to the
meeting.

Shelley Blotter stated that the purpose of the workshop was to solicit comments from
affected parties with regard to the regulations proposed for permanent adoption. The
Personnel Commission, at their September 2009 meeting, will consider the regulations
for adoption. If the Personnel Commission adopts the regulations, they will go into effect
when filed with the Secretary of State.

Shelley Blotter gave an explanation of the Furlough Leave regulation. She stated that the proposed regulation is similar to that which was adopted as an emergency regulation. The proposed language differs from the emergency regulation in that the language referencing section 5 of Senate Bill 433 was removed from subsection 1 of the regulation. This change was made to address a concern raised by the Department of Cultural Affairs. They felt that the emergency regulation language could be read to require employees that were exempted from the furlough by statute to be required to take the furlough leave by regulation. Ms. Blotter asked for comments regarding the proposed regulation.

Explanation of Proposed Regulation: Senate Bill 433 of the 2009 Legislative Session requires most State classified employees to take 96 hours of unpaid furlough leave in each of the next two fiscal years and for other than classified employees 12 days of unpaid Furlough Leave in each of the next two fiscal years. The purpose of this regulation is to ensure the fair and equitable administration of the furlough for classified, unclassified, and non-classified employees. The Personnel Commission has adopted similar language as an emergency regulation, which is due to expire on October 25, 2009. In order for it to become permanent, the emergency regulation must be adopted through the normal process.

Section 1. Chapter 284 of NAC is hereby amended by adding thereto a new section to read as follows:

New Section. Unpaid furlough leave.

1. Except as provided for in Senate Bill 433 of the 2009 Legislative Session, every employee must take unpaid furlough leave. An employee shall not be required to take any more or less unpaid furlough leave than required by statute if he moves from one position to another. A new employee in state service will only be responsible for the proportional number of hours or days of unpaid furlough leave remaining in the fiscal year. The hours or days required of the employee cannot be adjusted due to salary savings for the position.

2. To the extent practicable, a supervisor and employee shall work together to develop a schedule in which unpaid furlough leave is taken. If a schedule cannot be agreed upon, a supervisor may direct an employee to take unpaid furlough leave on a specific day and/or at a specific time, due to business necessity.

3. In no case will more than 8 hours of unpaid furlough leave be allowed in a pay week.

4. A full-time classified employee shall use 8 hours of unpaid furlough leave each month and a part-time classified employee shall use the proportional full-time equivalency of unpaid furlough leave each month, unless:

a. The employee's appointing authority files a plan for the employee to use an alternate schedule of unpaid furlough leave during different periods of the year, due to workload demands, and

b. The plan is approved in advance by the Director and the Director of the Department of Administration or their designated representatives in the executive branch of government, or

c. The plan is approved in advance by the chief fiscal officer of the institution

in the case of employees in the Nevada System of Higher Education.

In no case will an employee be required to use more unpaid furlough leave than the maximum set forth for the employee in Senate Bill 433.

5. There is no cash value to unpaid furlough leave. If an employee leaves state service and has taken more than the equivalent of 8 hours of unpaid furlough leave per month, the employee will not be reimbursed the difference.

6. Each appointing authority shall develop a policy to define the minimum increment of unpaid furlough leave to be taken by its classified employees. The policy may specify different increments of time for its divisions, locations, and/or work groups due to business necessity. The appointing authority shall disseminate the policy to all employees that are subject to the furlough.

7. In no case will overtime, standby pay, added regular time, or call back pay be allowed in the same pay period as unpaid furlough leave, unless approved in advance by the Director and the Director of the Department of Administration or their designated representatives in the executive branch of government or by the chief fiscal officer of the institution in the case of employees in the Nevada System of Higher Education.

8. Unpaid furlough leave will be counted as time worked for the purpose of determining eligibility under the Family and Medical Leave Act (FMLA). Unpaid furlough leave taken during the time an employee is on FMLA qualifying leave will not be counted against an employee's 12-week or 26-week FMLA entitlement.

Ron Cuzze commented that the Nevada State Law Enforcement Officers Association (NSLEOA) has no problems with the regulation as it is written. DPS has not put out their policy yet. NSLEOA's main concern is the other law enforcement agencies such as the AG's Office, Gaming, Secretary of State, and the universities that have not been provided the exceptions yet. We feel what Director Hafen and Director Thienhaus have approved so far will fit almost every situation in law enforcement. We have no objection at this point.

David Olsen commented that Department of Transportation feels that item #4 should allow an employee to be able to use more than 8 hours of furlough in a month as long as the employee did not exceed 96 hours in the year.

Shelley Blotter clarified that an employee can take more than 8 hours in a month; they just can't take more than 8 hours in a pay week. By receiving an exception they can take up to 4 days on most months.

David Olsen stated that he understood that, and he was referring to all employee's not only the ones that file an exception. He went on to say he thought it would be helpful if #7 went back to not allowing an employee overtime in the same pay week as furlough leave instead of the current language not allowing overtime in the same pay period. He explained that if you have overtime in the same week and you go back and adjust the furlough leave that an employee will have a hard time getting their 8 hours in the month and 96 hours in the year.

Shelley Blotter stated that overtime is allowed in the same pay week if you receive an exception. This was done for tracking purposes so we don't defeat the salary saving benefits of the furlough. So it can happen, but you have to show how you are going to manage your budget and meet your salary savings goals.

Thor Dyson commented that he had been talking with the District crews in the past weeks, about 300 employees are in the District, and explained to them that this is the law and we have regulations to follow. He stated he was happy to report that all the employees he had talked to are very understanding and are willing to do the furloughs; they are so grateful they have jobs. There are concerns with the crew supervisors about getting the work done. Mr. Dyson requested more flexibility in item #4, because most of NDOT's work is seasonal. The District has a lot of construction work in the summer and even more this year with the stimulus money. Right now, they have 15 major construction projects in his district alone, representing about 600 million dollars, and he has 100 people to do that work. If there were more flexibility where construction crews could take fewer furlough days in the given month, and furlough say in December, November or January that would help with the construction workload. NDOT has been rated number 1 in this among states for our roads and bridges. We know for a fact that this is going to change some. Contractors, when they bid a job, allow 20% for overtime; again if we could have the flexibility of more than 8 hours in a month that would be very helpful. Also if we could have overtime in a pay period and not in a pay week that would really help us out.

Shelley Blotter stated that there is nothing in the regulation that prevents the department from doing what Mr. Dyson was asking, so during the busiest times furloughs are delayed to a later month. All the department would have to do is submit an exception request first through Department of Personnel and the Department of Administration, and if it is approved, he can do what he wants to do.

There were no other questions, comments, opposition or discussion on this section.

Shelley Blotter gave an explanation of the proposed regulation change in section 2. She stated that the regulation was to address a situation that could occur related to a pandemic flu virus. The H1N1 virus was a new phenomenon to us, just within the last few months. She advised that there is a committee working to trying to anticipate what the effects of a pandemic would look like in the fall when we also have our regular flu virus. The flu could come in and take out large portions of our work force, so we are trying to be a little proactive and give agencies and employees tools to deal with this situation. This regulation is intended for when an employee is told that their work place is closed or they have a child that is attending a school, daycare program, or some type of after school recreation program and it is closed due to pandemic flu. Due to the closure the employee can't come into work so this would allow for the use administrative leave. This regulation is not for when the employee has the swine flu or their child is sick; they would still use their sick leave for that. This is just for when they are told they can't come into work because their work or daycare is closed due pandemic flu. Ms. Blotter asked for comments regarding the proposed regulation.

Explanation of Proposed Regulation: This amendment, proposed by the Department of Personnel, would expand the reasons an employee may be granted administrative leave. This type of leave is to address situations when there is a closure of a State office or work site due to a declared pandemic or when a dependent child cannot attend school, daycare or other program, e.g., day camp or recreation program due to closure due to a declared pandemic. An employee would be required to use their own sick leave if the employee or the employee's dependent child was ill.

Sec. 2. NAC 284.589 is hereby amended to read as follows:

NAC 284.589 Administrative leave with pay. (NRS 284.065, 284.155, 284.345)

1. An appointing authority may grant administrative leave with pay to an employee:
 - (a) To relieve the employee of his duties during the active investigation of a suspected criminal violation or the investigation of alleged wrongdoing;
 - (b) For up to 30 days when the appointing authority initiates the leave to obtain the results of an examination concerning the ability of the employee to perform the essential functions of his position;
 - (c) For up to 30 days to remove the employee from the workplace when he has committed or threatened to commit an act of violence;
 - (d) For up to 2 hours to donate blood; or
 - (e) To relieve the employee of his duties until the appointing authority receives the results of a screening test pursuant to NRS 284.4065.
2. The appointing authority, upon approval of the Risk Management Division of the Department of Administration, may extend administrative leave with pay granted to an employee for a purpose set forth in paragraph (b) or (c) of subsection 1.
3. Except as otherwise provided in subsection 4, an appointing authority or the Department of Personnel may grant administrative leave with pay to an employee for any of the following purposes:
 - (a) His participation in, or attendance at, activities which are directly or indirectly related to the employee's job or his employment with the State but which do not require him to participate or attend in his official capacity as a state employee.
 - (b) Closure of the employee's office or work site caused by a natural disaster, ***pandemic***, or other similar adverse condition when the employee is scheduled and expected to be at work. An appointing authority may designate certain employees as essential and notify them that they are required to report to work.
 - (c) ***Closure of a school, day care or program attended by an employee's dependent child due to a pandemic. An appointing authority may designate certain employees as essential and notify them that they are required to report to work.***
 - (d) His appearance as an aggrieved employee or a witness at a hearing of the Committee.
 - ~~((d))~~(e) His appearance as an appellant or a witness at a hearing conducted pursuant to NRS 284.390 by a hearing officer of the Department of Personnel.
 - ~~((e))~~ (f) His appearance to provide testimony at a meeting of the Commission.
4. An appointing authority or the Department of Personnel shall grant administrative

leave with pay to an employee for a purpose set forth in paragraph (c), (d) or (e) of subsection 3 if:

- (a) The employee requests the administrative leave for a period of time that is reasonably needed for him to testify at the hearing or meeting;
- (b) The employee requests the administrative leave at least 2 weeks before the leave is needed, unless such notice is impractical; and
- (c) The absence of the employee will not cause an undue hardship to the operations of his appointing authority or adversely impact the provision of services to clients or to the public.

5. An appointing authority shall grant administrative leave with pay to an employee for any of the following purposes:

- (a) The initial appointment and one follow-up appointment if the employee receives counseling through the Employee Assistance Program.
- (b) His attendance at a health fair which has been authorized by the Board of the Public Employees' Benefits Program.
- (c) His participation in an official capacity as a member of a committee or board created by statute on which he serves as a representative of state employees. Such leave must be in lieu of other fees provided for attendance at meetings and participation in official functions of the committee or board.

(d) Up to 8 hours for preparation for hearings regarding his suspension, demotion or dismissal as provided in subsection 1 of NAC 284.656.

(e) Up to 8 hours for preparation for hearings regarding his involuntary transfer.
(Added to NAC by Dep't of Personnel, eff. 10-26-84; A 8-28-85; 4-20-90; A by Personnel Comm'n, 8-1-91; A by Dep't of Personnel, 9-13-91; 12-26-91; 11-12-93; 3-23-94; 11-16-95; 10-27-97; R042-99, 9-27-99; R058-01, 9-6-2001; A by Personnel Comm'n by R038-03, 10-30-2003; R183-03, 1-27-2004; R145-05, 12-29-2005)

There were no other questions, comments, opposition or discussion on this section.

Shelley Blotter called the workshop closed at 9:20 A.M.